



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/172814

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 10, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on April 13, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly assessed a medical overpayment in the amount of \$1,237, under claim number [REDACTED], for the period of August 1, 2015 to October 31, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County. He is the only person in his household.

2. On June 10, 2015 the agency sent the petitioner a notice stating that effective July 1, 2015 he would receive BadgerCare (BC) Plus coverage. The notice went on to state that the petitioner had to report by the 10<sup>th</sup> day of the following month in which his household gross income went above \$980.83. This notice was sent the petitioner's current and correct address.
3. The petitioner's monthly gross income was as follows:
  - a. June 2015 - \$1,215
  - b. July 2015 - \$1,455
  - c. August 2015 - \$1,200
  - d. September 2015 - \$1,095
  - e. October 2015 - \$1,515
4. The petitioner never reported an increase in income. The petitioner received BC Plus benefits from July 1, 2015 through October 31, 2015. The total cost of these benefits for the State of Wisconsin was \$1,237.20.
5. On January 29, 2016 the agency received a state wage match (SWICA) discrepancy showing that the income the petitioner's employer reported to the State was different than the amount that the agency had budgeted or counted in determining the petitioner's FS benefits. The agency investigated this information. The agency determined the petitioner's actual income as stated above.
6. On February 24, 2016 the agency sent the petitioner a notice of Medicaid / BadgerCare Overpayment. The notice stated that the petitioner was overpaid \$1,237.20 in BC Plus benefits for the period of August 1, 2015 to October 31, 2015.
7. On March 16, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **DISCUSSION**

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Under BC+ rules the income limit for childless adult is 100% of the poverty level. BC+ Handbook, Appendix 16.1.1. That amount for a one-person household at the time of this overpayment was \$980.83. BC+ Handbook, App. 50.1. The notices sent to BC Plus recipients reflect the eligibility limits in the reporting requirements. A childless adult must report when his or her monthly household gross income exceeds 100% of the poverty level, which is \$980.83 for a household of one. BC+ Handbook, App. 27.3.

The agency sent the petitioner a notice on June 10, 2015 stating that he would receive BC Plus benefits effective July 1, 2015, and that he must report when his income exceeds \$980.83. The petitioner's income exceeded this reporting requirement in June 2015. He had until July 10, 2015 to report this increase in income, which would have impacted his BC Plus benefits effective August 1, 2015. He failed to report his increase in income to the agency. This failure to report caused the overpayment from August 1, 2015 to October 31, 2015.

The petitioner argues that he did not know that he had to report his increase in income. The agency sent the petitioner a notice with the specific dollar amount reporting requirement. It is up to the petitioner to read and understand the notices. I further note that the notices would not also be sent to the petitioner's employer as the employer asked. The notices were correctly sent to the recipient who is responsible to read and understand notices.

The petitioner next argues that he is a seasonal employee. The problem with this argument is that the BC Plus rules do not look at whether a person is a seasonal employee, but rather whether a person is a contractual employee. BC+ Handbook, App. 16.4.1. "When an employed BadgerCare Plus group member is paid under a contract, either written or verbal, rather than on an hourly or piecework basis, the income is prorated over the period of the contract." *Id.*

In this case the petitioner was not paid via a contract. Rather he was paid an hourly wage based upon the work available. When the work was not available, he was not paid, and received unemployment benefits. This receipt of unemployment benefits is further support that he is not a contractual employee.

I understand the petitioner's argument that if we took all of his pay over 12 months, and divided that amount by 12, he would likely be under 100% FPL. I have not verified his income over 12 months to have determined this for certain. However, given this argument, it appears that had the petitioner correctly reported his income, he could have been eligible for BC Plus benefits under the gap filling policy. The gap filling policy is as follows:

Due to differences between the eligibility rules used by the Marketplace for Advanced Premium Tax Credits (APTC) and the eligibility rules used when counting income for BadgerCare Plus, the Marketplace may find someone to be below 100% FPL based on their annual income, while BadgerCare Plus may find someone to be above 100% FPL based on their current monthly income. Because of this difference in eligibility rules, the individual is eligible for neither BadgerCare Plus nor APTCs. If applicants were left in this eligibility "gap", then only option available is to pay for the full cost of private health insurance through the Marketplace. To prevent this from happening, we must enroll these individuals based on a monthly equivalent of their expected annual income under a process called "gap filling".

Local agencies should contact the DHS CARES Call Center when an individual has applied at the Marketplace and has received a notice indicating that they can purchase health insurance but cannot get an APTC, and has also been denied BadgerCare Plus because of monthly income above 100% FPL.

BC+ Handbook, App. 16.1.4. and App. 16.1.4.1. If the petitioner had correctly reported his income been denied BC Plus, and been referred to the marketplace, and also denied tax credits through the marketplace, then he would have been eligible under this gap filling policy. The problem is that the

petitioner never contacted the marketplace, and thus never had the marketplace denial, which would have triggered this policy. Without such a denial, the petitioner is not eligible under this policy. Going forward this is an avenue that the petitioner may pursue for insurance through BC Plus.

### **CONCLUSIONS OF LAW**

The agency correctly assessed a medical overpayment in the amount of \$1,237, under claim number [REDACTED], for the period of August 1, 2015 to October 31, 2015.

**THEREFORE, it is**

### **ORDERED**

That the petition was dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of April, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 18, 2016.

Racine County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability